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Paper No. 5

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In re Application of  
Shah-Nazaroff et al.  
Application No. 09/904,825  
Filed: August 20, 2001  
Attorney Docket No. 42390.P6488C

**OFFICE OF PETITIONS**

ON PETITION

This is a decision on the Request for Correction of Filing Receipt, filed December 9, 2002, which is being treated as a petition under 37 CFR 1.53, requesting that the application be accorded a filing date of July 12, 2001, including omitted Figures 8 and 9.

The petition is dismissed.

The application was deposited on July 12, 2001, without drawing Figures 8 and 9 described in the specification. As a result, on August 9, 2001, the Office of Initial Patent Examination (OIPE) mailed a Notice of Omitted Item(s) in a Nonprovisional Application (hereinafter "Notice") stating that a filing date (of July 12, 2001), had been accorded the application; however, drawing Figures 8 and 9 appeared to have been omitted from the application.

The Notice provided Petitioner with three options: (1) promptly establish prior receipt in the USPTO of the drawing(s) at issue (generally by way of date-stamped postcard receipt (MPEP 503)) (by filing a petition under 37 CFR 1.53); (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date such submission as the application filing date (by filing a petition under 37 CFR 1.182); or (3) "An applicant willing to accept the application as deposited in the USPTO need not respond to the 'Notice of Omitted Item(s)', thereby constructively accepting the application as deposited with this Office. Amendment of the specification is required . . . to cancel all references to the omitted drawing[s]. . . ." See MPEP 601.01(g).

Petitioner filed a petition in response to the Notice, along with drawing Figures 8 and 9, on August 20, 2001 (Certificate of Mailing dated August 16, 2001). In that petition, "[a]pplicants petition[ed] to accept the date of this submission as the application filing date." Petition at p.1.

Accordingly, the application has been issued a filing date of August 20, 2001, including drawing Figures 8 and 9 filed on that date. The Request for Correction of Filing Receipt is thus denied.

The instant Request for Correction of Filing Receipt

The instant Request is accompanied by a copy of the return-receipt postcard, which reveals that the application was originally deposited on July 12, 2001, with 7 sheets of drawings which included 7 Figures. Accordingly, Petitioner's return-

receipt postcard fails to serve as *prima facie* evidence that Figures 8 and 9 were received at the USPTO on July 12, 2001. Accordingly, the filing date of the application remains August 20, 2001, including Figures 8 and 9 filed on that date.

It is also noted that petitioner may not rely on the Certificate of Mailing to obtain a filing date of August 16, 2001.

Applicable Law

While 37 C.F.R. § 1.8(a) provides for the timely filing of correspondence via mailing or facsimile transmission; however, 37 CFR § 1.8(a)(2) specifically states that

[t]he procedure described in paragraph (a)(1) of this section does not apply to, and no benefit will be given to a Certificate of Mailing or Transmission on, the following:

(I) Relative to Patents and Patent Applications-

(A) The filing of a national stage patent application specification and drawing or other correspondence for the purpose of obtaining an application filing date, including a request for continued prosecution application under § 1.53(d);

Petitioner thus may not rely upon the Certificate of Mailing to obtain a filing date of August 16, 2001. However, drawing Figures 8 and 9 were received in the Office on August 20, 2001. Therefore, the application has been accorded a filing date of August 20, 2001. See MPEP 601.01(g).

The application is being returned to Technology Center AU 2611 for examination in due course, retaining the filing date of August 20, 2001.

Telephone inquiries concerning this matter should be directed to Petitions Attorney Derek L. Woods at (703) 305-0014.

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